

O-312-14

**TRADE MARKS ACT 1994**

**TRADE MARK REGISTRATION 2416552**

**'VAUX'**

**IN THE NAME OF VAUX BEERS LIMITED**

**AND**

**APPLICATION No. 84422 BY VSES PROJECTS LIMITED  
FOR THE TRADE MARK TO BE REVOKED FOR NON-USE**

**AND**

**APPLICATION 2621892 BY VSES PROJECTS LIMITED  
TO REGISTER THE MARK 'VAUX'**

**AND**

**OPPOSITION 104133 BY VAUX BEERS LIMITED**

## Background

1. The trade mark VAUX is registered in the name of Vaux Beers Limited (“Beers”) for:

Beer, ale, stout and porter, all included in class 32.

2. The application for registration under No. 2416552 was made on 14 March 2006 and the registration procedure was completed on 25 August 2006.

3. On 22 May 2012, VSES Projects Limited (“VSES”) applied under section 46(1) of the Act for the registration to be revoked for non-use. VSES claims that the mark has not been put to genuine use in the period 26 August 2006 to 25 August 2011 and should therefore be revoked under s.46(1)(a) of the Act with effect from 26 August 2011. Alternatively, it claims that there was no genuine use of the mark in the five years between 22 May 2007 and 21 May 2012 and the mark should therefore be revoked with effect from 22 May 2012.

4. On 23 May 2012, VSES filed application No. 2621892 to register VAUX in class 32 for:

Beers; ales; mineral and aerated waters and other non-alcoholic beverages; fruit beverages and fruit juices; syrups and other preparations for making beverages.

5. Beers opposed that application on 22 November 2012, citing grounds under sections 5(2) and 5(3) based its earlier trade mark 2416552, i.e. the mark that VSES had applied to revoke for non-use. The s.5(3) ground is based, in part, on a claim that VSES’s use of VAUX would take unfair advantage of the reputation of VAUX beers in the North East of England going back to 1805.

6. Beers also filed a counterstatement in the revocation proceedings defending its trade mark 2416552 on the basis that:

“As the definition of genuine use is relatively wide and may be open to interpretation, defences will be provided both to demonstrate genuine use, and on the grounds of genuine reasons for non-use...”

Beers counterstatement indicated that these grounds would be “supported by substantial evidence and arguments”.

7. VSES filed a counterstatement to Beers notice of opposition to application 2621892. The counterstatement invoked s.6A of the Act and required Beers to show

that there had been genuine use of 2416552 in the five year period ending on the date of publication of application 2621892, i.e. 25 August 2007 to 24 August 2012.

8. The opposition and revocation proceedings were consolidated.

### **The evidence**

9. VSES filed a witness statement from Ian James Byworth, who is a Trade Mark Attorney working for Urquhart-Dykes & Lord, which represents VSES in these proceedings. Mr Byworth's evidence includes an extract from the Wikipedia online encyclopedia<sup>1</sup> recording that Vaux Breweries was a major brewer based in Sunderland. The company had produced beers under the name VAUX for 170 years before the (still profitable) brewery was shut down in 1999.

10. Mr Byworth also provides copies of pages he downloaded on 29 November 2013 from the website [vauxales.co.uk](http://vauxales.co.uk)<sup>2</sup>, which is operated by BEERs. Most of the pages say simply "coming soon", but there are pages with places to send messages and, apparently, order beers. No products are displayed on the website and there is no information about any products.

11. Beers evidence comes from Hassan Webb, who is a Director of Vaux Beers Limited. Mr Webb made three witness statements in these proceedings running to 55 pages in total. He also filed 115 exhibits occupying two lever arch files. The bulk of this evidence was intended to establish that Beers had made genuine use of trade mark 2416552 or had proper reasons for non-use, but in truth much of it was irrelevant or addressed the same point many times over. The key points are:

- Mr Webb accepts that up until 25 August 2012, Beers had not sold any goods under the mark VAUX.
- He nevertheless claims that the mark was first used on 19 February 2008, when he bought 8 domain names, [vauxales.co.uk](http://vauxales.co.uk), [vauxales.com](http://vauxales.com), [vauxbeers.co.uk](http://vauxbeers.co.uk), [vauxbeers.com](http://vauxbeers.com), [vauxbitter.co.uk](http://vauxbitter.co.uk), [vauxbitter.com](http://vauxbitter.com), [vauxbreweries.co.uk](http://vauxbreweries.co.uk) and [vauxbreweries.com](http://vauxbreweries.com), at a cost of £172<sup>3</sup>.
- Mr Webb also relies on a print out of the web page for [vauxales.com](http://vauxales.com) as it existed on 3 February 2011, which he obtained from the web archive Waybackmachine. This shows that the website provided links to other sites, including Thailand hotel and Betsport. The mark VAUX does not appear anywhere on the page other than as the domain name which triggered the 'hit'.

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<sup>1</sup> Exhibit IJB3

<sup>2</sup> Exhibit IJB4

<sup>3</sup> Webb W/S 24/2/13, paragraph 13 and exhibit HW20.

- Mr Webb says that he received a request from Mr Steve Smith, who is now a Director of VSES, to buy or licence the VAUX trade mark. He received a second letter from a trade mark attorney or solicitor acting on behalf of Mr Smith<sup>4</sup>. Mr Webb says that he responded to these letters on 15 May 2012, indicating that the letters were sent to him some time prior to that.
- Mr Webb conducted research to find contract brewers to brew beer that would be sold under the mark<sup>5</sup>. In support of this claim he provides copies of print-outs dated 18 May 2012 from the websites of four contract brewers<sup>6</sup>.
- On 20 May 2012, Mr Webb purchased a book from amazon.co.uk entitled “The Home Brewer’s Recipe Book” by Les Howarth<sup>7</sup>. The book included a recipe for Vaux Breweries ale. Mr Webb accepts that this book was listed on Amazon in 2004, but explains that he could not find it until 2012<sup>8</sup>.
- Mr Webb commenced email enquiries on 21 May 2012 with four contract brewers about producing a “generic bitter and a traditional taste”. He emailed Hambleton Ales on 24 May 2012 saying that he would like to go ahead with the “smallest possible run” of 1500 bottles using that company’s “in-house generic recipe” in order to test the marketplace<sup>9</sup>. The VAUX trade mark was not mentioned in these emails.
- After purchasing “The Home Brewer’s Recipe Book” on 20 May 2012, Mr Webb says that he had a marketing plan created by Olympus Marketing, which he says was handed to him on 28 May 2012<sup>10</sup>. It is not clear exactly when the plan was commissioned, so it is not possible to say whether it was before 22 May 2012 when the application for revocation was filed.
- On 24 May 2012, Mr Webb ordered 250 labels via a US website at a cost of \$25.95. These were delivered in early June 2012<sup>11</sup>. The invoice is addressed to Mr Webb at Vaux Beers Ltd, but they do not show what was on the labels<sup>12</sup>. Mr Webb obtained a further quotation for labels from a UK based company on 31 May 2012<sup>13</sup>.

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<sup>4</sup> In exhibit HW3 to Mr Webb’s W/S of 24 February 2013, which consists of 20 pages of “Supporting Legal Arguments”

<sup>5</sup> Paragraph 10 of Mr Webb’s W/S of 24 February 2013.

<sup>6</sup> Exhibits HW6-HW9 to Mr Webb’s W/S of 24 February 2013

<sup>7</sup> Exhibit HWC1- HWC12 to Mr Webb’s W/S of 24 February 2013

<sup>8</sup> Paragraphs 31/32 of Mr Webb’s W/S of 1 February 2014

<sup>9</sup> Exhibits HW10-HW14 to Mr Webb’s W/S of 24 February 2013

<sup>10</sup> Exhibit HW19 to Mr Webb W/S of 24 February 2013 and paragraph 15 thereof

<sup>11</sup> Paragraph 16 of Mr Webb’s W/S of 24 February 2013

<sup>12</sup> Exhibit HW15 to Mr Webb’s W/S of 24 February 2013

<sup>13</sup> Exhibit HW17 to Mr Webb’s W/S of 24 February 2013

- It is claimed that a fully functioning website was available by 11 June 2012, which contained imagery of VAUX beers and a link to place an order<sup>14</sup>. Mr Webb commissioned an Indian company called A1 Websystems to build this website on 8 June 2012.
- Mr Webb says that “upon using the ‘place an order’ or ‘contact us’ functions the customer would be informed which products were initially available to order, and told which products still requires further technical development to bring back to market but allowing them the option to pre-order it”.
- The closure of the original Vaux brewery led to a great deal of local anger. An article in the Sunderland Echo dated 1 July 2009 records that the closure came about because the site was worth more without the brewery than with it, that the closure led to a loss of jobs and legal wrangling meant that the site stayed derelict for 10 years after the closure. The closure was described by the ex-Managing Director as “corporate vandalism”<sup>15</sup>.
- The residual reputation and goodwill associated with the original Vaux Brewery still exists<sup>16</sup> or, where it is suggested that Beers seeks to appropriate the goodwill of another, the goodwill has been abandoned<sup>17</sup>.
- On 18 May 2008, Mr Webb’s uncle was attacked whilst working in Ethiopia and subsequently died. Mr Webb says that this had a devastating and profound effect on his well being and reduced his ability to function normally. This delayed his plans to market VAUX beer between 2008 and January 2012<sup>18</sup>. He was working in Switzerland when learned of the attack on his uncle and his supervisor told him to go home, but he remained at work<sup>19</sup>.

## The Hearing

12. A hearing took place on 23 June 2014 at which VSES was represented by Mr Ian Byworth of Urquhart-Dykes & Lord. Beers was not represented.

## VSES’s application to revoke 2416552

13. Section 46 (so far as relevant) is as follows.

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<sup>14</sup> Paragraph 55 & 56 of Mr Webb W/S of 1 February 2014 and exhibits HW24, HW66 & 207-209

<sup>15</sup> Exhibit HW33

<sup>16</sup> Paragraph 29 W/S Webb 15 September 2013

<sup>17</sup> Paragraph 69 W/S Webb 1 February 2014

<sup>18</sup> Paragraph 28 W/S Webb 24 February 2013

<sup>19</sup> Paragraph 39/40 W/S Webb 1 February 2014

46. - (1) The registration of a trade mark may be revoked on any of the following grounds-

- (a) that within the period of five years following the date of completion of the registration procedure it has not been put to genuine use in the United Kingdom, by the proprietor or with his consent, in relation to the goods or services for which it is registered, and there are no proper reasons for non-use;
- (b) that such use has been suspended for an uninterrupted period of five years, and there are no proper reasons for non-use;
- (c).....
- .....
- (d).....

(2) For the purpose of subsection (1) use of a trade mark includes use in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered, and use in the United Kingdom includes affixing the trade mark to goods or to the packaging of goods in the United Kingdom solely for export purposes.

(3) The registration of a trade mark shall not be revoked on the ground mentioned in subsection (1)(a) or (b) if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.

(4) -

(5) Where grounds for revocation exist in respect of only some of the goods or services for which the trade mark is registered, revocation shall relate to those goods or services only.

6) Where the registration of a trade mark is revoked to any extent, the rights of the proprietor shall be deemed to have ceased to that extent as from –  
(a) the date of the application for revocation, or (b) if the registrar or court is satisfied that the grounds for revocation existed at an earlier date, that date.”

14. Section 100 is also relevant, which reads:

“If in any civil proceedings under this Act a question arises as to the use to which a registered trade mark has been put, it is for the proprietor to show what use has been made of it.”

15. In *Stichting BDO v BDO Unibank, Inc.*, [2013] F.S.R. 35 (HC), Arnold J. stated as follows:

“51. Genuine use. In *Pasticceria e Confetteria Sant Ambroeus Srl v G & D Restaurant Associates Ltd* (SANT AMBROEUS Trade Mark) [2010] R.P.C. 28 at [42] Anna Carboni sitting as the Appointed Person set out the following helpful summary of the jurisprudence of the CJEU in *Ansul BV v Ajax Brandbeveiliging BV* (C-40/01) [2003] E.C.R. I-2439; [2003] R.P.C. 40 ; *La Mer Technology Inc v Laboratoires Goemar SA* (C-259/02) [2004] E.C.R. I-1159; [2004] F.S.R. 38 and *Silberquelle GmbH v Maselli-Strickmode GmbH* (C-495/07) [2009] E.C.R. I-2759; [2009] E.T.M.R. 28 (to which I have added references to *Sunrider v Office for Harmonisation in the Internal Market (Trade Marks and Designs)* (OHIM) (C-416/04 P) [2006] E.C.R. I-4237):

(1) Genuine use means actual use of the mark by the proprietor or third party with authority to use the mark: *Ansul*, [35] and [37].

(2) The use must be more than merely token, which means in this context that it must not serve solely to preserve the rights conferred by the registration: *Ansul*, [36].

(3) The use must be consistent with the essential function of a trade mark, which is to guarantee the identity of the origin of the goods or services to the consumer or end-user by enabling him, without any possibility of confusion, to distinguish the goods or services from others which have another origin: *Ansul*, [36]; *Sunrider* [70]; *Silberquelle*, [17].

(4) The use must be by way of real commercial exploitation of the mark on the market for the relevant goods or services, i.e. exploitation that is aimed at maintaining or creating an outlet for the goods or services or a share in that market: *Ansul*, [37]-[38]; *Silberquelle*, [18].

(a) Example that meets this criterion: preparations to put goods or services on the market, such as advertising campaigns: *Ansul*, [37].

(b) Examples that do not meet this criterion: (i) internal use by the proprietor: *Ansul*, [37]; (ii) the distribution of promotional items as a reward for the purchase of other goods and to encourage the sale of the latter: *Silberquelle*, [20]-[21].

(5) All the relevant facts and circumstances must be taken into account in determining whether there is real commercial exploitation of the mark, including in particular, the nature of the goods or services at issue, the characteristics of the market concerned, the scale and frequency of use of the mark, whether the mark is used for the purpose of marketing all the goods and services covered by the mark or just some of them, and the evidence that the proprietor is able to provide: *Ansul*, [38] and [39]; *La Mer*, [22] -[23]; *Sunrider*, [70]-[71].

(6) Use of the mark need not always be quantitatively significant for it to be deemed genuine. There is no de minimis rule. Even minimal use may qualify as genuine use if it is the sort of use that is appropriate in the economic sector concerned for preserving or creating market share for the relevant goods or services. For example, use of the mark by a single client which imports the relevant goods can be sufficient to demonstrate that such use is genuine, if it appears that the import operation has a genuine commercial justification for the proprietor: *Ansul*, [39]; *La Mer*, [21], [24] and [25]; *Sunrider*, [72]”.

16. It is convenient to start by examining whether the evidence shows genuine use of the mark in the period 26 August 2006 to 25 August 2011.

17. Beers relies on the purchase of eight domain names including the word ‘vaux’ on 19 February 2008. However, the ownership of a domain name cannot, by itself, create or maintain a market for goods. Therefore this did not constitute genuine use of the mark.

18. Secondly, Beers relies on the evidence showing that a search on *vauxales.com* on 3 February 2011 would have returned a web page with links to other web sites. However, that only shows that *vauxales.com* was in use as an internet address. The mark VAUX did not appear on the web page. Further, it is implicit from Mr Webb’s claim that a fully functioning website was in operation by June 2012 that the web page identified as existing in February 2011 was not part of a fully functioning website promoting VAUX beers.

19. I conclude that there was no genuine use of the mark in the period 26 August 2006 and 25 August 2011.

20. The next issue is whether there was any genuine use in the period 26 August 2011 and the date of the application for revocation on 22 May 2012. If there was then section 46(3) applies:

“...if such use as is referred to in that paragraph is commenced or resumed after the expiry of the five year period and before the application for revocation is made: Provided that, any such commencement or resumption of use after the expiry of the five year period but within the period of three months before the making of the application shall be disregarded unless preparations for the commencement or resumption began before the proprietor became aware that the application might be made.”

21. Within this period, Beers relies on its approach to four contract brewers on 21 May 2012. However, there is no evidence that this involved any use of the mark VAUX.

22. Beers also relies on the commissioning of a marketing strategy shortly after 20 May 2012. However, there is no evidence that this was commissioned before 22 May



2012, or that it involved any use of the mark VAUX. It clearly did not involve any public facing use of the mark.

23. In relation to the use of the VAUX mark on the website of vauxales in early June 2012, Mr Byworth drew my attention to my own decision in *Healey Sports Cars Switzerland Limited v Jensen Cars Limited* and the subsequent judgment of the High Court<sup>20</sup> in which Mr Henry Carr Q.C., sitting as a Deputy Judge, stated that:

“13. In my judgment, acts which were not done merely to preserve the rights conferred by the registration may nonetheless be insufficient to constitute use within the meaning of section 46(1)(a). This is clear from the requirement to take all relevant facts and circumstances into account. It is also clear from [37] of *Ansul*, which the Hearing Officer cited at [31] of his Decision:

“Use of the mark must therefore relate to goods or services already marketed or about to be marketed and for which preparations by the undertaking to secure customers are under way, particularly in the form of advertising campaigns.””

And:

“26. I agree with the Hearing Officer that the question of whether goods are “about to be marketed” is to be decided in the context of the economic sector concerned, and that some goods will take longer to develop than others. I also agree that the press release and website, which were published a few days before expiry of the five year period and enabled no more than initial interest in a future development to be registered, did not show that the goods were about to be marketed.”

24. Mr Byworth submitted that the use of VAUX on the website in this case, as in *Healey*, was not use in relation to any goods that existed at that time for sale. Further, again like in *Healey*, the web page did not contain enough information about VAUX beers to enable anyone to register a serious interest in buying them. I see the strength of those points, particularly given Mr Webb’s evidence that the “fully functioning” website had a “place an order” function, and yet no sales of VAUX beer had occurred by 24 August 2012, over 2 months later. However, the website in question was not commissioned until 11 June 2012. This was after the application for revocation had been filed. It is not therefore necessary to decide whether the use of VAUX on the website amounted to genuine use for the purposes of assessing the application for revocation. I find that there was no genuine use of the mark in the period between 26 August 2011 and the date of the application for revocation on 22 May 2012. Thus s.46(3) does not apply.

25. I next consider whether Beers had proper reasons for non-use. Three are claimed. Firstly, it is said that the difficulty and delay in obtaining the recipes for the

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<sup>20</sup> [2014] EWHC 24 (Pat)

original VAUX beers meant that it was not possible to introduce a commercially successful beer under that brand until the recipe was found by Beers in 2012. Secondly, it is said that the adverse publicity surrounding the closure of the original brewery meant that it was not possible to successfully launch a new beer under the mark VAUX. Thirdly, it is said that the tragic death of Mr Webb's uncle incapacitated him to some extent between May 2008 and January 2012 and, as Mr Webb is the moving force behind Beers, this prevented earlier use of the mark VAUX.

26. In *Armin Häupl v Lidl Stiftung & Co. KG*, Case C-246/05, the CJEU held that:

“52. In particular, as correctly stated by the Advocate General in [79] of his Opinion, it does not suffice that “bureaucratic obstacles”, such as those pleaded in the main proceedings, are beyond the control the trade mark proprietor, since those obstacles must, moreover, have a direct relationship with the mark, so much so that its use depends on the successful completion of the administrative action concerned.

53. It must be pointed out, however, that the obstacle concerned need not necessarily make the use of the trade mark impossible in order to be regarded as having a sufficiently direct relationship with the trade mark, since that may also be the case where it makes its use unreasonable. If an obstacle is such as to jeopardise seriously the appropriate use of the mark, its proprietor cannot reasonably be required to use it nonetheless. Thus, for example, the proprietor of a trade mark cannot reasonably be required to sell its goods in the sales outlets of its competitors. In such cases, it does not appear reasonable to require the proprietor of a trade mark to change its corporate strategy in order to make the use of that mark nonetheless possible.

54. It follows that only obstacles having a sufficiently direct relationship with a trade mark making its use impossible or unreasonable, and which arise independently of the will of the proprietor of that mark, may be described as “proper reasons for non-use” of that mark. It must be assessed on a case-by-case basis whether a change in the strategy of the undertaking to circumvent the obstacle under consideration would make the use of that mark unreasonable. It is the task of the national court or tribunal, before which the dispute in the main proceedings is brought and which alone is in a position to establish the relevant facts, to apply that assessment in the context of the present action.

55. Having regard to the foregoing considerations, the answer to the second Proper question referred for a preliminary ruling must be that Art.12(1) of the Directive must be interpreted as meaning that obstacles having a direct relationship with a trade mark which make its use impossible or unreasonable and which are independent of the will of the proprietor of that mark constitute “proper reasons for non-use” of the mark. It is for the national court or tribunal to assess the facts in the main proceedings in the light of that guidance.”

27. Mr Webb relies on *Magic Ball*<sup>21</sup> as authority for the proposition that technical or development problems connected with the sale of a specific product may constitute a proper reason for non-use. Mr Byworth submitted that the decision to use the mark only for beers corresponding to the original recipes for VAUX beers was a decision of the proprietor of the mark and therefore not independent of the will of the proprietor.

28. I note that when in May 2012 Mr Webb appears to have commissioned 1500 beers from a contract brewer in order to “test the market” for VAUX beers, he ordered beers made according to the brewer’s generic recipe. If he had thought that only beers made according to the original Vaux Breweries recipes would find a market under VAUX there would not have been any point in testing the market with a beer brewed to a generic recipe<sup>22</sup>. I conclude that Mr Webb believed that a beer brewed to a generic recipe might be able to find a market under the mark VAUX, or at least that it was not commercially pointless to use the mark in relation to such beers. It was not therefore “impossible or unreasonable” to use the mark in relation to a beer brewed other than to an original recipe. The absence of an original recipe was not therefore a commercial factor that was “independent of the will of the proprietor” and it was not a proper reason for non-use.

29. I would add that if I had taken a contrary view on this point, I would have needed more persuasion than is apparent from Beer’s evidence that Beers had been actively searching for the recipe during the relevant five year period. This is particularly so in circumstances where:

- The book in which the recipe was found in 2012 appears to have been available throughout the 5 year period 2006-2011, and
- The book was purchased only after Beers found out about VSES’s commercial interest in the mark.

If it had been relevant, it would have been particularly important to show that real and sustained efforts were made to find to the original recipes in order to establish that the absence of those recipes had “a direct relationship with a trade mark which [made] its use impossible or unreasonable”.

30. I find that the second reason advanced for non-use lacks credibility. On the one hand Beers says that VSES’s application to register VAUX should be refused because it would take unfair advantage of the reputation of VAUX beers (which given that Beers itself has not used the mark, must mean the reputation of the mark as a

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<sup>21</sup> [2000] RPC 439

<sup>22</sup> This is the beer he appears to have offered to a potentially customer called Beers of Europe on or around 4 June in order to “gauge the market” for VAUX beers: see HW18 and W/S Mr Webb 24 February 2013, paragraph 17

result of its use in relation to the beers of the original Vaux brewery), whilst on the other hand it says that the reputation is so caustic that no one could launch a new beer under the VAUX name during the relevant five year period. I accept Mr Byworth's submission that whatever ill feeling might exist in Sunderland is directed at those who closed the original brewery, not at the VAUX mark. I see no merit in this reason for non-use.

31. The third reason is almost as weak as the second. I have no doubt that the tragic death of Mr Webb's uncle in 2008 had a profound effect on him and caused him and his family a great deal of grief. However, he was able to continue working throughout the period 2008 to 2012 so it plainly did not incapacitate him. Further, whilst one might accept that the death of a close relative could adversely affect commercial activity for a limited period of time, this is not a proper reason for non-use of the mark by Beers over a period in excess of 3 years.

32. I therefore find that there are no proper reasons for non-use and trade mark 2416552 should be revoked for non-use with effect from 26 August 2011.

### **Beers' opposition to application No. 2621892**

33. As both of Beers' grounds of opposition to VSES's application depend on trade mark 2416552, which (subject to a successful appeal) will be revoked with effect from 26 August 2011, i.e. prior to the date of VSES's application on 23 May 2012, the opposition to VSES's application is bound to fail.

34. I therefore reject the opposition to VSES's application.

### **Outcome**

35. Trade mark 2416552 should be revoked for non-use with effect from 26 August 2011.

36. Application No. 2621892 may proceed to registration.

## **Costs**

37. As VSES has been successful in the both aspects of the consolidated proceedings it is entitled to a contribution towards its costs.

38. I therefore order Vaux Beers Limited to pay VSES Projects Limited the sum of £3350 within 7 days of the end of the period allowed for appeal.

£400 for filing the application for revocation (including the £200 official fee);  
£200 for considering Beers' Notice of Opposition and filing a counterstatement;  
£2000 for considering Beers' evidence and filing evidence in reply;  
£250 for attending a case management conference ("CMC") on 28 May 2013;  
£500 for attending the hearing and filing a skeleton argument.

39. I have awarded a sum towards the top of the scale in respect of the evidence because Mr Webb's evidence was exceptionally voluminous and very difficult to follow. It must therefore have taken longer than usual for VSES to assess and respond to.

40. I have awarded a contribution towards the cost of the CMC because it should not have been necessary. Mr Webb sought a confidentiality order in relation to evidence made up of extracts from a publication that had been in the public domain for years. That was plainly inappropriate and caused VSES unnecessary costs.

**Dated this 17th Day of July 2014**

**Allan James  
For the Registrar**